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10 Attorneys for Defendants

11 KEYNETICS INC. and CLICK SALES INC.

12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION
16

17 WILLIAM SILVERSTEIN,

18 Plaintiff,

19 v.

20 KEYNETICS INC., a Delaware corporation,
21 CLICK SALES INC., a Delaware corporation,
22 418 MEDIA LLC, an Ohio limited liability
company,

23 Defendants.
24

Case No.: 3:16-cv-00684

NOTICE OF REMOVAL

Action Filed: October 2, 2015

25 PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332(d), 1441, 1446, and 1453,
26 Defendants Keynetics Inc. and Click Sales Inc. (collectively “Defendants”) remove this action
27 from the Superior Court of the State of California for the County of San Francisco, and in support
28 of this removal state as follows:

PROCEDURAL HISTORY AND NOTICE TIMING

1
2 1. On October 2, 2015, Plaintiff William Silverstein filed this proposed class action
3 in the Superior Court of the State of California for the County of San Francisco. *See* Ex. A
4 (Original Complaint). Defendants were not served with this pleading.

5 2. On January 5, 2016, Plaintiff William Silverstein filed a First Amended Complaint
6 (“FAC”), which alleges violations of California’s Restrictions on Unsolicited Commercial Email,
7 Cal. Bus. & Prof. Code § 17529.5. *See* Ex. B. Defendants were electronically served, through
8 counsel, on January 12, 2016. *See* Ex. C (January 12, 2016 E-mail).

9 3. This Notice of Removal is timely filed because it is within thirty (30) days of
10 service on Defendants of a copy of the initial pleading setting forth the claim for relief upon
11 which the action is based. *See* 28 U.S.C. § 1446(b); *Murphy Bros., Inc. v. Michetti Pipe*
12 *Stringing, Inc.*, 526 U.S. 344, 347-48 (1999).

13 4. Removal to this judicial district is proper under 28 U.S.C. § 1441(a) because San
14 Francisco County, where the action is currently pending, is located within the Northern District of
15 California.

16 5. No previous notice of removal has been filed in this case.

17 6. By removing this action, Defendants do not waive any defenses available to them.
18 By way of setting forth the bases for removal in this Notice, Defendants in no way concede the
19 truth of the allegations in the First Amended Complaint. Nor do Defendants concede that the
20 alleged claim is amenable to class treatment or that Plaintiff or any proposed class member is
21 entitled to any recovery.

JURISDICTION

22
23 7. This Court has jurisdiction over this putative class action under the Class Action
24 Fairness Act (“CAFA”), 28 U.S.C. §§ 1332(d), 1453, because: (1) the proposed class consists of
25 at least 100 members; (2) the citizenship of at least one proposed class member in the First
26 Amended Complaint is different from a Defendant; and (3) the amount in controversy, aggregated
27 for all class members, exceeds \$5 million, exclusive of interests and costs.

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1 8. Plaintiff purports to bring this case as a class action, and seeks certification of a
2 putative class. *See* FAC ¶¶ 53-62, 73; *see also* 28 U.S.C. § 1332(d)(1)(B). Plaintiff seeks to
3 represent a class of California residents who are members of the “C, Linux and Networking”
4 group on the networking website LinkedIn, and who received unsolicited commercial e-mails
5 from certain advertising websites. FAC ¶ 53. Plaintiff alleges that “[a]s of August 6, 2015, there
6 were at least 19,268” members of the “C, Linux and Networking” LinkedIn group, and that
7 “[a] sizeable number of the group members reside in California.” *Id.* ¶ 55. While the number of
8 proposed class members is not alleged, given the number of group members and the allegation
9 that a number of them reside in California, the proposed class is likely greater than 100 members.
10 *See* § 1332(d)(5)(B).

11 9. Sufficient diversity of citizenship is present, as the citizenship of at least one
12 proposed class member is different than that of one of the Defendants. *See* § 1332(d)(2)(A).
13 Plaintiff William Silverstein alleges he is a resident of California. FAC ¶ 4. Similarly, members
14 of the proposed class are “California residents.” *See id.* ¶ 53. Defendant Keynetics Inc. and its
15 subsidiary, Click Sales Inc., are both Delaware corporations with their principal places of
16 business in Boise, Idaho. *Id.* ¶¶ 5-6. Keynetics Inc. and Click Sales Inc. are not citizens of
17 California. Therefore, the citizenship of at least one proposed class member—Plaintiff—is
18 different than that of one of the Defendants.

19 10. The amount in controversy exceeds \$5 million. *See* § 1332(d)(2). Although
20 Plaintiff does not allege a specific aggregate damages amount, he seeks liquidated damages of
21 \$1,000 per unlawful email message, attorneys’ fees, and injunctive relief. FAC ¶¶ 72-79. As set
22 forth below, the alleged facts support a finding that the amount in controversy exceeds \$5 million
23 in the aggregate. *See Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct. 547, 554 (2014)
24 (“[D]efendant’s notice of removal need include only a plausible allegation that the amount in
25 controversy exceeds the jurisdictional threshold.”).

26 11. Plaintiff alleges that the class consists of hundreds, if not thousands, of people,
27 each of whom is entitled to tens of thousands of dollars in statutory damages. Plaintiff seeks
28 “liquidated damages of \$1,000 per unlawful email message.” FAC ¶ 75. Plaintiff further alleges

1 that he has received “at least 86” such e-mails, which, if he were to prevail on his liability and
2 damages theories, would amount to \$86,000 in statutory damages alone. *Id.* ¶ 35. Plaintiff
3 further alleges that “[a] sizeable number” of the 19,268 members of the “C, Linux and
4 Networking” LinkedIn group are members of the class. *Id.* ¶ 55. California is a major center of
5 software development, and it is reasonable to assume that the group—geared towards software
6 programmers—contains a large number of members who are California residents. Even if 5,000
7 of the 19,268 members—roughly one-fourth—are California residents and receive one such e-
8 mail, this amounts to \$5 million in liquidated damages alone. And if even one percent of the
9 “C, Linux and Networking” LinkedIn group received half as many emails as Plaintiff alleges he
10 received, the statutory damage amount alone would exceed \$5,000,000.

11 12. The above calculation does not include the injunctive relief or attorneys’ fees
12 sought by Plaintiff, which are also included in the aggregate amount. The FAC prays for
13 attorney’s fees as authorized by Bus. & Prof. Code § 17529.5. *See* FAC ¶ 76. When considering
14 the amount in controversy for purposes of CAFA jurisdiction, courts in this Circuit have found
15 that a request for attorneys’ fees can be estimated as an additional 25% of any potential recovery
16 to the amount in controversy. *See Giannini v. Nw. Mut. Life Ins. Co.*, No. 12-77, 2012 WL
17 1535196, at *4 (N.D. Cal. Apr. 30, 2012) (quoting another source) (concluding that the
18 defendants’ estimation of attorneys’ fees as twenty-five percent was “not unreasonable” after
19 noting that this Circuit “‘has established 25% of the common fund as a benchmark award for
20 attorney fees’”). Accordingly, the FAC meets both the minimal diversity and amount in
21 controversy requirements for federal jurisdiction under CAFA.

22 13. The exceptions to removal under 28 U.S.C. §1332(d) do not apply. The local
23 controversy exception requiring the U.S. District Court to decline to exercise jurisdiction applies
24 only when “greater than two-thirds” of the proposed class members are “citizens of the State in
25 which the action was originally filed.” §1332(d)(4)(A)(i)(I). Here, all members of the proposed
26 class are “California residents.” FAC ¶ 53; *cf. Aviles v. Quik Pick Express, LLC*, No. 15-5214,
27 2015 WL 5601824, at *3 (C.D. Cal. Sept. 23, 2015) (finding the “putative class definition
28

1 regarding California residents, rather than citizens . . . insufficient alone to establish the two-
2 thirds California citizens requirement under the ‘local controversy’ exception”).

3 14. Even assuming that each of these residents is domiciled in California, Plaintiff
4 cannot meet his burden of demonstrating that the requirements of § 1332(d)(4) are met.
5 *See Bradford v. Bank of Am. Corp.*, No. 15-5201, 2015 U.S. Dist. LEXIS 120800, at *18-19
6 (C.D. Cal. Sep. 10, 2015) (citing *Mondragon v. Capital One Auto Fin.*, 736 F.3d 880 (9th Cir.
7 2013)) (concluding that the plaintiff failed to meet his burden where the plaintiff presented no
8 evidence to demonstrate the elements of the local controversy exception). Here, Defendant
9 418 Media LLC, which Plaintiff alleges has its principle place of business in California, is not a
10 “significant” Defendant in this matter. Plaintiff does not seek “significant relief” from 418 Media
11 LLC. *See* §1332(d)(4)(A)(i)(II)(aa). Nor does Plaintiff allege that 418 Media LLC’s “conduct
12 forms a significant basis for the claims asserted by the proposed plaintiff class.” *See*
13 §1332(d)(4)(A)(i)(II)(bb). Plaintiff’s sole allegation with respect to 418 Media LLC is that it
14 owns the domain name linkedinfluence.com, only one of the five websites that he alleges were
15 advertised in the unsolicited emails he received. FAC ¶ 7.

16 15. In contrast, Plaintiff’s allegations all focus on Keynetics Inc. and Click Sales Inc.,
17 doing business as ClickBank. *See, e.g., id.* ¶¶ 15-20, 27, 37, 56, 60-62; *see also Christmas v.*
18 *Union Pac. R.R. Co.*, No. 15-02612, 2015 WL 5233983, at *4 (C.D. Cal. Sept. 8, 2015) (“For
19 California Defendants to fulfill the local defendant requirement of the ‘local controversy’
20 exception, California Defendants must be the primary focus of the claims.”). Moreover, unlike
21 the other Defendants allegedly involved in each e-mail at issue, Plaintiff alleges that 418 Media
22 LLC owns only one of the five domains at issue. *See* FAC ¶¶ 7, 27 (alleging that the e-mails at
23 issue advertised linkedinfluence.com, paidsurveyauthority.com, takesurveysforcash.com,
24 click4surveys.com, and getcashforsurveys.com, and that 418 Media LLC owns the domain name
25 to one of the listed sites, linkedinfluence.com); *see also Christmas*, 2015 WL 5233983, at *6-7
26 (finding that the local controversy exception did not apply where the local defendants were only
27 alleged to have contact with some of the proposed class members).

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NOTICE AND SERVICE

16. Defendants, in accordance with 28 U.S.C. § 1446(d), will promptly provide written notice of this removal, together with a copy of this Notice, to Plaintiff, through counsel, and will file a copy of this Notice with the Superior Court of the State of California for the County of San Francisco.

Dated: February 10, 2016

Respectfully submitted,

FENWICK & WEST LLP

By: /s/ Tyler G. Newby
Tyler G. Newby

Attorneys for Defendants
KEYNETICS INC. and CLICK SALES INC.

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